

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS,

Complainant,

and

MARYL PACIFIC CONSTRUCTION, INC.,

Respondent.

CASE NO. OSH 2010-24

ORDER NO. 415

ORDER GRANTING RESPONDENT'S  
MOTION TO COMPEL PRODUCTION  
OF THE STATE OF HAWAII  
OCCUPATIONAL SAFETY AND  
HEALTH DIVISION'S  
INVESTIGATIVE FILE FOR  
SUBCONTRACTOR SURE STEEL,  
INC.

ORDER GRANTING RESPONDENT'S MOTION  
TO COMPEL PRODUCTION OF THE STATE OF  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION'S  
INVESTIGATIVE FILE FOR SUBCONTRACTOR SURE STEEL, INC.

On December 9, 2010, Respondent MARYL PACIFIC CONSTRUCTION, INC. (Maryl or Respondent), filed a Motion to Compel Production of the State of Hawaii Occupational Safety and Health Division's Investigative File for Subcontractor Sure Steel, Inc., with the Hawaii Labor Relations Board (Board). Respondent asserts, *inter alia*, that in a separate case, the State of Hawaii Occupational Safety and Health Division (HIOSH) conducted an investigation which revealed that a foreman employed by Sure Steel, Inc., failed to observe the fall protection and safety procedures and this omission resulted in a job site fatality; that Maryl requested and Complainant refused to disclose the investigative file in Sure Steel, Inc., on the ground that the disclosure would frustrate a legitimate government purpose within the meaning of Hawaii Revised Statutes (HRS) § 92F-13(3); that Maryl and Sure Steel, Inc. are being prosecuted for the same incident; that it will rely upon the affirmative defense of employee misconduct on the part of the deceased foreman from Sure Steel, Inc.; that Maryl proposed a stipulation to keep all the information confidential and limited to the case and to return the file if the citation against Sure Steel was not adjudicated or resolved when the present case was completed; and that Complainant did not reply to Maryl's proposal to stipulate to keep the file contents confidential and restricted to the parties. Maryl contends that Complainant has not challenged the relevance of the Sure Steel, Inc., file to its claim of employee misconduct; that the disclosure of the file would not frustrate a governmental purpose; the citation against Maryl arose from the same facts as that in the citation of Sure Steel; and Maryl would stipulate to keep the contents of the investigative file confidential and limited to the case. Respondent further requested the Board to extend all discovery deadlines and

reschedule the trial so that Maryl has sufficient time to conduct all discovery on the possible affirmative defenses.

Complainant did not file an opposition to the instant motion to compel production.

Based upon a review of the record and consideration of the arguments presented, the Board finds that the Sure Steel, Inc., investigative file is relevant to the instant proceedings because the citations appear to be based upon the same incident and may lead to evidence which supports Maryl's affirmative defense of employee misconduct.

HRS § 92F-13 provides, in relevant part, as follows:

§ 92F-13 Government records; exceptions to general rule. This part shall not require disclosure of:

\* \* \*

(3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function; . . .

Thus, depending on the facts of the case, a legitimate government function could be frustrated if a party requested the investigative file in an ongoing investigation. However, the Board notes based upon its file of HIOSH Orders, that Complainant and Sure Steel, Inc., recently resolved the employer's contest of the HIOSH citation appearing to arise from the same incident and entered into a Stipulation and Settlement Agreement in Case No. OSH 2010-19. The Board approved the Stipulation and Settlement Agreement in Order No. 413 issued on December 20, 2010. Thus, the Sure Steel case is closed and there does not appear to be a frustration of any government regulatory function by the release of the investigative file to Maryl at this point. Moreover, Maryl has agreed to keep the contents of the investigative file confidential and limited to the case.

Accordingly, the Board grants the instant motion and orders Respondent to produce the Sure Steel, Inc.'s investigative file to Maryl forthwith. The Board further orders the discovery deadline of January 18, 2011 extended to **March 21, 2011** and the trial presently scheduled on February 22-23, 2011 continued to **April 26-27, 2011 at 9:00 a.m.** in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. MARYL  
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DATED: Honolulu, Hawaii, December 23, 2010.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member



NORMAN K. KATO II, Member

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